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August 23, 2002

Jeffrey Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

DEPT. OF TRANSPORTATION
PRODUCTS
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RE: Docket No. NHTSA 2001-8677, Notice 3, Regarding the Final Rule About
Reporting of Information and Documents About Potential Defects and
Retention of Records That Could Indicate Defects; and

Docket No. NHTSA 2001-8677, Notice 2, Regarding the Request for Public
Comment on Proposed Collection of Information -508

Dear Dr. Runge:

Enclosed please find the Petition for Reconsideration and Request for Clarification of
The Juvenile Products Manufacturers Association, Inc. in the above-referenced actions.

If you have any questions or need clarification regarding any of the points raised in these
comments, please contact us.

Sincerely,



Erika Z. Jones
Counsel to
The Juvenile Products Manufacturers Association, Inc.

cc: Docket Management, Room PL-401
Office of Management and Budget

**PETITION FOR RECONSIDERATION
AND REQUEST FOR CLARIFICATION**

of The Juvenile Products Manufacturers Association, Inc.
Regarding the Final Rule About
Reporting of Information and Documents About Potential Defects
and Retention of Records That Could Indicate Defects
NHTSA Docket No. 2001-8677, Notice 3

and Regarding the Request for Public Comment On
Proposed Collection of Information (67 Fed.Reg. 42843, June 25, 2002)
NHTSA Docket No. 2001-8677, Notice 2

The Juvenile Products Manufacturers Association, Inc. (JPMA) submits the following Petition for Reconsideration and Request for Clarification addressing issues raised by NHTSA's Final Rule establishing "early warning" reporting requirements under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. JPMA previously provided comments on NHTSA's Advance Notice of Proposed Rulemaking and NHTSA's Notice of Proposed Rulemaking on this same topic. This petition and clarification request is also relevant to NHTSA's recent request for public comment on the proposed collection of information that is embedded in the "early warning" reporting requirements.

The Juvenile Products Manufacturers Association, Inc. is a national trade association of more than 400 companies in the United States, Canada and Mexico. These companies manufacture and/or import infant and juvenile products such as cribs, car seats, strollers, bedding and a wide range of accessories and decorative items. Of the more than 400 JPMA members, only five still manufacture automobile child restraints for sale in the United States. The automobile child restraint manufacturers are Britax, Dorel Juvenile Group, Evenflo, Graco/Century, and Peg Perego. In addition, Kolcraft Enterprises, Inc., a JPMA member, is affected by this rule, despite having exited the child restraint market some years ago, because the regulation requires Kolcraft (and others who have exited the market) to continue to report until its most recently manufactured child restraint is five years old. These six companies have many competitors for other juvenile products (such as strollers or cribs) who do not manufacture automobile child restraints and who, therefore, will not bear the additional costs that will be associated with complying with the "early warning" rules. As a result, these six companies will incur a competitive disadvantage of higher costs of doing business. While some such additional costs are inevitable as a result of TREAD, JPMA urges NHTSA to ensure that the additional costs are proportionate to the public benefit that will accrue from the additional costs. This point is especially relevant to JPMA's concerns about the one-time retroactive report that is required by the new rules.

As JPMa noted in its comments to the ANPRM and NPRM, child restraint manufacturers are substantially smaller than motor vehicle manufacturers and do not have sophisticated data storage and retrieval systems. Moreover, the financial condition of the industry is not strong, and many companies are not in a position to support large new investments at this time. The one-time retroactive report is of particular concern, because of the enormous resources such a report would consume, particularly in light of the relatively small benefit the report will provide NHTSA.

I. The Proposed One-Time Reporting of Baseline Information.

NHTSA's rule requires a one-time retroactive reporting of twelve quarters of historical information about the number of consumer complaints/warranty claims and field reports received within the past three years regarding child restraints manufactured since January 1, 1998.

As JPMa pointed out in its comments to the NPRM, NHTSA has significantly underestimated the costs and feasibility of providing such a report. In those comments, JPMa told NHTSA that its members have not historically coded their claims information the same way as NHTSA now proposes to require the reports to be organized. While it is possible to reformat the coding structures prospectively, it will be *extremely* expensive and time-consuming to impose the coding system manually on three years-worth of historic files containing warranty claims/consumer complaints/field reports. For many manufacturers, such an effort would require manually reviewing all complaints and claims received in the past three years, and manually coding them to NHTSA's categories. Unlike the automotive industry, the warranty claims/consumer claims of JPMa members are not already automated in a way that permits easy searching and recoding for the historic reporting. For that reason, JPMa opposed providing even historic warranty claims, which the auto industry was willing and able to provide. NHTSA acknowledged the high cost of providing historic reports of customer complaints, and decided to drop that requirement in the final rule. Yet, in the child restraint industry, customer complaints and warranty claims are ordinarily not differentiated, and are ordinarily retained in the same files. Likewise, "field reports," to the extent they involve the examination of a product from the field by an employee of the child restraint manufacturer, are ordinarily recorded on the customer complaint record itself, and thus become part of the customer complaint. Dealer "field reports" often arrive in the form of e-mail messages from retailers, all of which would have to be manually searched and coded. For the same reason that NHTSA did not require *any* industry sector to provide historic customer complaint information, the agency should not require JPMa members to provide historic warranty claim/field report data, because they are ordinarily all (except for dealer/retailer field reports found in e-mail records) contained in the same file as the customer complaints, which NHTSA has already agreed are far too burdensome to read and code manually.

In the Final Regulatory Evaluation (FRE) accompanying the "early warning" rule, the agency estimated that it would take the child restraint industry 2,540 hours to identify and report on historic consumer complaints, 0 hours to identify and report on historic

warranty claims and 0 hours to identify and report on historic field reports. See Table 6, Page 37 of the FRE. Obviously, this must be in error. The burden is not zero for the manual review and coding of historic warranty claims and field reports. To the contrary, JPMA members estimate that it will take **38,581.5 hours** to prepare the required report of historic information, using NHTSA's methodology as applied to an estimate of the actual number of records to be reviewed.

The FRE does not explain specifically how it came up with the estimate of 2,540 hours for the child restraint industry. The FRE states generally states that the agency estimated the number of records for each industry sector by applying a "recall factor" to the number of records in each potentially reportable category that was estimated by the Alliance of Automobile Manufacturers. The "recall factor" is the ratio of child restraint units recalled to the number of light vehicles recalled. NHTSA then multiplied the quantity of records in each category (as estimated by the Alliance of Automobile Manufacturers) by that factor. FEA at 30. NHTSA did not follow this methodology for the child restraint industry, but did not explain the methodology it did follow.

As NHTSA acknowledged on page 33 of the FRE, the child restraint industry's records are not automated to the degree that would permit easy preparation of this one-time report. Although some manufacturers have modest degrees of automation for their warranty/consumer complaint databases, others do not. And, even for those with limited automation, these records will have to be manually searched and coded to match the NHTSA reporting categories. A survey of the six JPMA members affected by this rule produced an estimate of **462,978 actual records to be reviewed** to comply with this one-time historic report of warranty claims and field reports.¹ JPMA notes again that the relief provided to the automobile manufacturing industry from the proposal to provide historic customer complaints is of no value to JPMA members, because their warranty claims and consumer complaints are combined. Using NHTSA's own methodology described on page 33 of the FRE (multiplying 462,978 documents by 5 minutes per document, divided by 60 minutes per hour) yields a burden estimate of 38,581.5 man hours for the six JPMA members. Again, using NHTSA's methodology that assumes 3 minutes of technical time and 2 minutes of clerical time per document, for a weighted average wage rate of \$53.726, NHTSA's methodology produces an estimated cost for the one-time historic report (for the six current and former child restraint manufacturers who are members of JPMA) of \$2.072 million, based on the actual number of records to be reviewed, **more than ten times higher** than NHTSA's estimate of \$177,531 for the entire child restraint industry (which appears to assume that only about 40,000 documents would have to be reviewed industry-wide, working backwards through NHTSA's

¹ JPMA notes that its members were not required by NHTSA regulations to retain records of warranty claims/consumer complaints/field reports until August 9, 2002, the effective date of the new record retention rules. Accordingly, not all JPMA members have historic warranty claims/consumer complaints/field reports that date back three years. The estimate of 462,978 records already takes into account the more limited records retained by those members whose records do not date back three years. This is another reason to provide relief to JPMA members from the one-time historic report, because it will provide an uneven "baseline," potentially to the detriment of those who chose to retain these records. Moreover, the burden of preparing the one-time historic report falls disproportionately on those whose records are more complete and/or less automated.

methodology). (NHTSA will need to adjust these JPMA estimates upward to account for the other child restraint manufacturers who are not members of JPMA. NHTSA estimated that there are ten manufacturers in the child restraint sector.)

In its comments to the NPRM, JPMA urged NHTSA to abandon the proposal for a baseline report, because the time and other resources it will require could delay the implementation of the prospective system which will, in any event, provide adequate data for comparative purposes within a short period of time. NHTSA did not respond to this JPMA comment, nor did it respond to JPMA's observation that it is likely that "platforms" of child restraints will be substantially revised later this year to accommodate the LATCH requirement. The practical utility of the retroactive reporting as a baseline for comparing performance of new products will be very limited.

For all of the above reasons, JPMA requests that NHTSA reconsider the requirement for any historic reporting from the child restraint manufacturers, on the basis that the burden in time and cost of creating this one-time report is enormous, under NHTSA's own methodology, and far exceeds NHTSA's estimate of 2,540 hours and \$117, 531. Instead, it is likely to be more than \$2 million for JPMA members alone, and even higher when NHTSA adjusts the estimate for child restraint manufacturers who are not represented by JPMA. NHTSA has not justified that burden as necessary for its safety mission.

II. Definition of "Model" of Child Restraint.

The "early warning" rule will require manufacturers of child restraints to categorize their products into "models." The child restraint industry uses "model" designators for a variety of reasons that do not always correspond with structural or material differences in the product. For example, one manufacturer assigns a different "model number" to identify different patterns on the pad fabric. Another manufacturer assigns a different "model number" to identify products destined for different retailers. Accordingly, dividing the early warning reports by "model number" of child restraint models may result in separating similar restraints into different reports, and could reduce the value of the information for the agency.

JPMA proposes that, for purposes of the "early warning" reports, a child restraint "model" should be defined to be child restraints with the same shell and same restraint/harness system. Infant restraints that are offered both with and without detachable bases, but that otherwise have the same shell and restraint/harness system should be considered the same "model" for "early warning" reporting purposes. By contrast, two child restraints that use the same shell, but which use different restraint/harness configurations would be treated as separate "models." This has the advantage of grouping restraints with the same shell and restraint/harness system – two of the components of particular interest to NHTSA.

III. Technical Corrections and Other Issues.

A. Definition of “Handle.” NHTSA did not define child restraint “handle” in the final rule, yet “handle” incidents are required to be reported under the “early warning” system. Because some child restraints do not have separate handles, and are designed to be carried by the shell, it is necessary to define “handle” as a separate element of a child restraint that must be separately recorded for purposes of reporting to NHTSA under the “early warning” rules.

One suggestion is to define “handle” as follows: “any element of the child restraint that is designed to facilitate carrying the restraint outside a motor vehicle, other than an element of the shell.”

B. U.S. vs. Foreign Production. JPMA respectfully requests NHTSA to clarify whether the quarterly reports are required to report worldwide production or production for sale in the United States. JPMA believes that NHTSA intended the latter, but seeks clarification of that point.

C. “Hybrid” Platforms. NHTSA indicated in the preamble to the final rule (but not in the rule itself) that it would require child restraint manufacturers to indicate the “type” of child restraint system in the quarterly reports. NHTSA indicated that “type” of child restraint means one of the following three categories: (1) rear-facing infant seat; (2) booster seat; or (3) other. The requirement to identify the “type” of child restraint was included on the templates for “early warning” submissions that were posted on the NHTSA website on August 14, 2002.

JPMA has no objection to identifying the “type” of child restraint system on the reporting template; however, JPMA points out that the template does not require identification of “type” of restraint on any of the substantive reporting categories (death/injury claims, warranty claims/consumer complaints, etc.). For this reason, it is not clear what value it is to NHTSA to require segregating production numbers by “type.” Moreover, JPMA respectfully suggests that the three “types” identified by NHTSA do not adequately cover the range of products available in the marketplace. Should NHTSA decide to retain this requirement (which does not appear in the regulatory text of the rule), JPMA requests clarification of how its members should categorize a “hybrid” product that is both a rear-facing infant seat and a toddler seat. Is the “type” of that seat a “rear facing infant seat” or is it properly considered a “type” of “other” restraint? Many seats are also “hybrids” on the other end of the age spectrum, offering toddler seat protection that grows into a booster seat by changing certain configurations on the product. Is such a seat a “booster seat” or is it correctly classified as “other”?

D. Adult vs. Child Injuries and Injuries in Competitor Restraints. The requirement to report the number of injuries per incident raises a question about how JPMA members should report to NHTSA when there are injuries to adults or unrestrained

children in a collision that also involved an allegedly restrained child. A related question is how to report injuries that occur to children restrained in a competitor's restraint.

For example, manufacturer A receives a claim for an injury to a child allegedly restrained in a child restraint manufactured by A. That same claim is also served on child restraint manufacturer B, in whose product a second child was allegedly injured, and on vehicle manufacturer C, in whose vehicle the two restrained children, their unrestrained brother and their two parents were allegedly injured.

It is JPMA's understanding that NHTSA wants JPMA members to report on injuries/fatalities to a child allegedly situated in a child restraint manufactured by the reporting manufacturer. It would contaminate the database if JPMA members' reports also included the adult injuries or unrestrained child injuries that occurred in the same motor vehicle collision, or if they included the injuries that allegedly occurred to a child restrained in a competitor's product. JPMA members will likely be on notice of these other injuries, because any claim/lawsuit will list all the theories on which the claimants seek relief, even against entities other than JPMA members. JPMA seeks NHTSA's concurrence on this interpretation -- that only those injuries/fatalities to children purportedly restrained in child restraints manufactured by the reporting manufacturer should be reported by JPMA members under the early warning program.

E. Harness Clips. JPMA is not clear as to the scope of the definition of "buckle and restraint harness," particularly as it relates to harness clips, which are used to position harnesses to improve the protection provided by the harnesses. The harness clip (sometimes called a harness tie) does not restrain the child. Rather, it helps to ensure that the harness is properly positioned on the child's shoulders and chest at time of impact. JPMA interprets the definition of "buckle and restraint harness" not to include "harness clips," but seeks NHTSA's concurrence in that interpretation.

F. Issues Related to Lower Anchor/Tethers. JPMA seeks clarification that NHTSA is not expecting JPMA members to report warranty claims/consumer complaints related to lower anchor/tether issues. Under NHTSA's definitions, all complaints/claims regarding vehicle components installed in accordance with FMVSS 225 are reportable by the vehicle manufacturer as "seat belt" issues. JPMA asks for NHTSA's confirmation that it has correctly interpreted the "early warning" requirements.

G. Issues Related to the Definition of "Base." JPMA seeks NHTSA's concurrence that "base" means a detachable base used with an infant seat, and does not include the permanently installed base associated with some designs of convertible child restraints that allow changing positions for child comfort.

H. Issues Related to the Definition of "Shell." JPMA seeks NHTSA's concurrence that the "shell" is the plastic shell on which certain components are mounted to create a child restraint system, but that the "shell" accessories were not swept into this definition, such as the tether, the label or the seat pad.

I. Accessories. JPMA seeks NHTSA's concurrence that accessories sold separately from child restraint systems are not covered by the "early warning" rule or, in the alternative, if they are covered, how they are to be reported, since they are divorced from any "make/model/model year" restraint unit. These accessories include such items as child restraint bases that are sold separately from any child restraint unit; tether strap sets sold separately from any child restraint unit, LATCH retrofit units sold separately from any child restraint unit, etc.

J. Production Number issues. JPMA seeks NHTSA's concurrence that the historic production numbers on the twelve quarterly reports are the production numbers for that quarter, and not the annual production number for that production year. Read literally, the rule requires the annual production number for that production year to be repeated on each historic quarterly report; however, JPMA does not believe that NHTSA intended that result.

For the prospective quarterly reports, JPMA members seek clarification as to whether the production numbers are supposed to be limited to the production in that quarter, or whether they are supposed to be cumulative production numbers in that production year, inclusive of the new quarter. JPMA believes that NHTSA intended the latter, but seeks confirmation of that interpretation.

K. No Date Code. JPMA seeks NHTSA's guidance on how to handle the situation in which a consumer complaint/warranty claim comes into the company but the production date is not ascertainable, because the date code is not legible. Which quarterly report should include these reports?

L. Recordkeeping Issues. JPMA seeks reconsideration and/or clarification of the apparent requirement in the final "early warning" rule to retain "all" documents underlying the early warning reports. To the extent that JPMA members can retain the substantive information about a claim, is it necessary to retain the non-substantive information (such as name, address, telephone number of claimant), or hard-copies of incoming or outgoing correspondence related to the claim (such as letters obtaining additional information from the claimant), that complete the entire underlying claim record? If NHTSA truly intended to require manufacturers to retain "all" documents "underlying" the early warning reports, this is a tremendous recordkeeping burden that goes well beyond current business practices and will impose substantial costs on the manufacturers. These costs and burdens have neither been estimated nor accounted for in the rule nor in the accompanying Paperwork Reduction Act justification filed with the Office of Management and Budget.

M. "Field Reports" of Returned Restraint Inspections. As currently defined, a report of an inspection by a manufacturer's employee (or agent) of a restraint returned from the field would be a "field report" (assuming that the report addressed a "failure, malfunction, lack of durability or other performance problem" of the restraint). In many cases, a manufacturer's employee (or agent) will inspect the returned seat for a variety of issues, to identify any significant "failure, malfunction, lack or durability or other

performance problem,” without regard to the complaint of the customer who returned the restraint. For example, a restraint returned for a customer complaint of a “sticky” buckle may be inspected, and deemed to have a properly functioning buckle, but the inspector notes a deformation in the seat shell that indicates potential misuse. How should such a “field report” be categorized in the quarterly report?

O. Templates for Reporting. As discussed in item C, above, NHTSA recently posted on its website the templates for child restraint manufacturers to use in making its quarterly reports to the agency. JPMA discussed above the issues related to identifying the “types” of child restraints on that template. Another issue related to the template is the lack of specific identification on the death/injury report of the system/component involved. The template provides *five* spaces, designated as System A, B, C, D and E. Yet, the rule requires manufacturers to identify which of *six* categories is relevant: the four specified systems, which are coded as 51-54 in the regulation, as well as 98 for “other” and 99 for “unknown.” JPMA recommends that the template be redesigned to specify the six codes: 51, 52, 53, 54, 98 and 99, rather than the five letters A-E.

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JPMA appreciates this opportunity to provide comments to the agency. If there is any additional information that JPMA or its members can provide to assist the agency in developing this rule, please contact us.